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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,950	08/21/2003	Jasper D. Rine	B96-021-6	2061

23379 7590 06/15/2006

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EXAMINER

RAMIREZ, DELIA M

ART UNIT PAPER NUMBER

1652

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10646950	8/21/03	RINE ET AL.	B96-021-6

EXAMINER

Delia M. Ramirez

ART UNIT	PAPER
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1652

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Commissioner for Patents

Claims 1, 5, 9, 11, 15 are pending.

Applicant's amendment of claims 1, 5, and cancellation of claims 2-4, 6-8, 10, 12-14, as submitted in a communication filed on 4/1/2006 is acknowledged.

Applicant's election with traverse of Group I, claims 1-3, 5-7, 9, 11, drawn to an expression vector comprising a polynucleotide encoding the polypeptide of SEQ ID NO: 2 or 4, and a recombinant cell comprising said vector, in a communication submitted on 4/1/2006 is acknowledged.

The amendment filed on 4/1/2006 canceling claims 2-3, 6-7, which were previously drawn to the elected invention, and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention for the following reasons.

Applicant has amended claims 1 and 5 such that they are now directed to the subject matter of non-elected Groups II and III (i.e., a polynucleotide comprising SEQ ID NO: 5 and 6) as defined in the previous Office action mailed on 3/8/2006 (restriction requirement). The remaining claims as amended are now directed to two different groups, none of them comprising the elected subject matter (i.e., Group I) as defined in the restriction requirement. Applicant traverse the rejection on the ground(s) that the polynucleotides of SEQ ID NO: 1 and 3 hybridize to the polynucleotides of SEQ ID NO: 5 and 6, thus the polynucleotides of SEQ ID NO: 5 and 6 are included in the elected invention. This argument is not found persuasive.

Upon an alignment of the polynucleotides of SEQ ID NO: 5 (373 nucleotides long) and SEQ ID NO: 6 (362 nucleotides long) against the polynucleotides of SEQ ID NO: 1 (1825 nucleotides long; encodes the polypeptide of SEQ ID NO: 2) and SEQ ID NO: 3 (2948 nucleotides long; encodes the polypeptide of SEQ ID NO: 4), it has been found that neither the polynucleotide of SEQ ID NO: 5 nor the polynucleotide of SEQ ID NO: 6 are fragments of the polynucleotides of SEQ ID NO: 1 or 3 (encode the polypeptides of SEQ ID NO: 2 and 4). See attached alignment. The structural identity of the polynucleotides of SEQ ID NO: 5 and 6 with the polynucleotides of SEQ ID NO: 1 and 3 is between 2.4%-4.7% (matches x 100/length of SEQ ID NO: 1 or 3; 4.7% = 85 matches between SEQ ID NO:1 and SEQ ID NO: 6 / length of SEQ ID NO:1 is 1825). Thus, the polynucleotides of SEQ ID NO: 5 and 6 are not deemed obvious variations of the polynucleotides of SEQ ID NO: 1 or SEQ ID NO: 3 (encode the polypeptides of SEQ ID NO: 2 or 4) which is the subject matter of Group I. Furthermore, in view of the extremely low sequence identity, a sequence search of SEQ ID NO: 5 or 6 is not co-extensive to SEQ ID NO: 1 or 3, or vice versa. Thus, for the reasons set forth in the restriction requirement and the fact that the polynucleotides of SEQ ID NO: 5 and 6 are not fragments or obvious variations of the

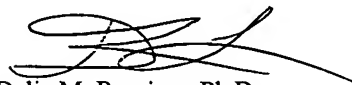
polynucleotides of SEQ ID NO: 1 or 3, Groups I-III each comprise distinct products.

As clearly stated in the previous Office Action, applicant is required to elect a single group for examination on the merits even though the requirement can be traversed (37 CFR 1.143). Applicant may respond to the restriction requirement by presenting claims directed to the elected invention (Group I), or by electing among the remaining Groups. Currently, Group II encompasses claims 5 and 11, whereas Group III encompasses claims 1 and 9. Claim 15 by virtue of amendments to claim 1 is now directed in part to previously defined Groups VII and VIII (Group VII encompasses the subject matter of claim 15 as it relates to the polynucleotide of SEQ ID NO: 6, Group VIII encompasses the subject matter of claim 15 as it relates to the polynucleotide of SEQ ID NO: 5).

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PMR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Delia M. Ramirez whose telephone number is (571) 272-0938. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Ponnathapura Achutamurthy can be reached on (571) 272-0928. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.


Delia M. Ramirez, Ph.D.
Patent Examiner
Art Unit 1652

DR
June 9, 2006